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Client Alert: Blocking Assets To Secure Debt in the UAE

By Alexander Lütgendorf

The Creditor's Dilemma

Collecting outstanding debts can be not only a frustrating experience but also costly. The options available will be limited and, in many cases, a creditor will have to litigate in court or arbitrate to recover his money.

But, what can be done if a creditor has reason to believe that his debtor will dispose of his assets before final judgment or an arbitral award can be enforced? After all, nobody will wish to throw good money after bad, wasting resources on legal proceedings without being able to enforce his claims against a debtor.

The Solution – Attachment Orders

In the United Arab Emirates (UAE), a creditor is able to attach assets in circumstances where it is suspected that the debtor may deliberately dissipate his assets before a judgment or arbitral award can be enforced.¹ A precautionary attachment order is thus perhaps one of the most important debt recovery tools available to creditors through the UAE courts.

By obtaining an attachment order, a claimant is able to ensure that the defendant does not frustrate a judgment or an arbitral award. An additional benefit is that an attachment order may also put pressure on a debtor to consider making full payment of the outstanding debt or agreeing an early settlement.

Precautionary attachment orders can be sought in relation to both domestic court and arbitral proceedings as well as foreign proceedings.

Which assets?

Attachment orders can be made against most assets in the UAE, including real estate property, bank accounts, machinery, goods or other assets owned by the debtor, although commonly, such orders are made in relation to bank accounts and real estate.

Exceptions relate to assets owned by the UAE state or the government or any of the Emirates. Equally, assets reasonably needed by a debtor, such as his home or reasonable domestic items and items needed for his trade or profession, may not be attached.

Proving the Need for Attachment

In order to succeed in an application for an attachment order, evidence must be furnished to the Court which establishes that there is an imminent danger of assets being removed from the jurisdiction so as to negate the effect of any judgment or arbitral award subsequently obtained.

Accordingly, an attachment order can be granted by the Court in circumstances where:

¹ UAE Code of Civil Procedure (Fed Law No 11 of 1992 as amended by Fed Law No 10 of 2014), Articles 252 *et seq.*

- (i) the debtor has no settled abode in the UAE,
- (ii) the creditor is concerned that the debtor may flee or conceal his assets, or
- (iii) security for outstanding payments is likely to be lost.

Timing

Due to its urgent nature, the procedure for obtaining an attachment order is quick and effective.

Applications are made *ex parte* (i.e. on the application of one party alone, without hearing the defendant) and are usually granted or refused within a very short period of time (i.e. one to five days). The decision, however, is entirely at the judge's discretion.

Importantly, if an attachment order is granted, the creditor must commence his substantive claim within eight days of the order being granted.

If the attachment order secures claims brought in proceedings abroad (including arbitration proceedings), the creditor will ordinarily seek only an order validating the attachment on the basis of the proceedings brought abroad or in arbitration (rather than a judgment on the merits).

Additional Requirements

The Court may require the applicant to provide security, such as a bank guarantee or an undertaking to cover any damages that the defendant may suffer should the action prove unjustified.

The applicant is, however, liable for damages only if the order was obtained maliciously and/or with the intention of causing harm or damage. The mere fact that an attachment order is subsequently discharged does not make the applicant liable for damages. To succeed, it must be demonstrated that the applicant acted in bad faith, which in practice is difficult to prove.

Subsequent Attachment Orders

Finally, attachment orders may not only be granted prior to final judgment or an arbitral award being rendered; an attachment order may also be sought after judgment or issuance of an arbitral award, in which case, however, there is no need to prove that the danger of assets being dissipated is imminent.

Significantly, the Abu Dhabi Court of Cassation (Appeal No 519 of 2013 dated 2 October 2013) confirmed in a ruling that the award creditor was entitled to an attachment order of an award debtor's assets in the UAE pending ratification of the arbitral award without the need to establish a real risk that assets will be dissipated.

Final Word

While Precautionary Attachment Orders are expeditious and effective measures, the application must be prepared with great care and diligence if a creditor is to persuade a Court to grant the application and achieve the desired result.

If you would like more information about this topic then please contact us.

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